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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,784	01/16/2002	Bahadir Erimli	95-507	2631
20736	7590	09/27/2006		
MANELLI DENISON & SELTER 2000 M STREET NW SUITE 700 WASHINGTON, DC 20036-3307			EXAMINER DIVECHA, KAMAL B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/046,784	ERIMLI, BAHADIR	
	<b>Examiner</b>	<b>Art Unit</b>	
	KAMAL B. DIVECHA	2151	

All participants (applicant, applicant's representative, PTO personnel):

(1) KAMAL B. DIVECHA. (3)\_\_\_\_\_

(2) Leon R. Turkevich. (4)\_\_\_\_\_

Date of Interview: 18 September 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☒ No. Wd  
If Yes, brief description: 10/046,784

Claim(s) discussed: 1-7.

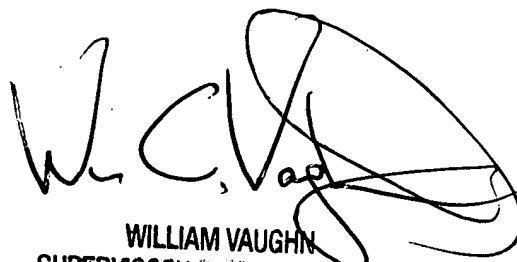
Identification of prior art discussed: None.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

  
WILLIAM VAUGHN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

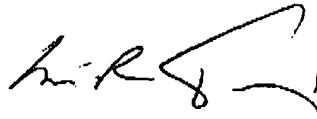
Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The rejection under 35 USC 112, first paragraph, with respect to claims 1-7, 35 USC 101 with respect to claims 1-7, and a possible 35 USC 112, 2nd with respect to claim 4 was discussed. Applicant also submitted an argument presented in some other application for traversing the 35 USC 112, 2nd paragraph rejection (please see the attached). Examiner in response stated that these issues and a possible allowance will be discussed with the examiner's current acting supervisor and the decision will be issued in the next office action.

For any questions regarding the substance of the interview, the examiner can be reached at 571-272-5863.



Kamal Divecha  
Art Unit 2151  
September 18, 2006.

Re: 10/046,784



Claims — are rejected under 35 USC §112, second paragraph because they "contain the trademark/trade name Infiniband [sic]". This rejection is respectfully traversed. Recitation of industry standards such as "InfiniBand™" in the claims has been deemed acceptable by the USPTO. For example, the attached Exhibit A is a printout from the USPTO website that lists 34 issued patents reciting "InfiniBand" within their claims.

Further, Section 2173.05(u) of the MPEP (Rev. 2, May 2004) explicitly states that "[t]he presence of a trademark or trade name in a claim is not, *per se*, improper under 35 U.S.C. 112, second paragraph" and cites *Ex parte Simpson* only for the instance where a trademark is used in a claim to identify or describe a particular material or product. See *Ex parte Simpson*, 218 1020, 1021-22 (Bd. Pat. App. & Inter. 1992) (claim scope uncertain as to material which forms the "Hypalon" membrane: question as to how much chlorosulphonated polythene must be present before infringement occurs). The Examiner's assertion that the trademark is used to identify an InfiniBand™ network is inaccurate: the claims specify configuring a device to perform communication operations with the InfiniBand™ network.

Hence, the claims specify configuring operations to operate with a network configured according to a prescribed specification identified as InfiniBand™: infringement would be determined based on whether the claimed operations had a configuration that would be operable when connected to a destination configured to operate according to the InfiniBand™ protocol (i.e., "an InfiniBand™ network"). Consequently, *Ex parte Simpson* is distinguishable because the claims do not use the trademark to attempt to identify a particular material or product, but rather use the trademark to specify the protocol used by a destination in communication with the claimed computing node.

Moreover, the subject claims do not claim the protocol referred to as InfiniBand™ per se, but rather specify communication operations according to the InfiniBand™ protocol. One having ordinary skill in the art would appreciate that the InfiniBand™ protocol specifies a logical sequence of events that are to occur in order to reach a certain result.

Further, one skilled in the art would appreciate that the reference to the industry standards in the specification and claims refers to the industry standards as of the January 16, 2002 filing date of the application. The subject application history includes *numerous* cited references that describe InfiniBand™ in detail, including the cited documents by Cassidy, Avery, and Kagan.

Hence, one skilled in the art would recognize that the claims should be interpreted as performing operations or functions consistent with the industry standard in effect as of the filing date of the application. Any subsequent changes in the standard are not relevant, since (1) they are not related to the claimed function; (2) they are consistent with the industry standard in effect as of the filing date; or (3) they are not within the scope of the invention to the extent that the subsequent changes are inconsistent or supersede the industry standard in effect as of the filing date of the application.

Further, the MPEP not only permits use of trademarks having definite meanings in patent applications, but requires that the proprietary nature of the marks be respected (see, e.g., MPEP §608.01(v) at page 600-88 (Rev. 2, May 2004)).

For these and other reasons, the §112, second paragraph rejection should be withdrawn.